

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION**

Latasha Holloway, *et al.*,

Plaintiffs,

v.

City of Virginia Beach, *et al.*,

Defendants

Civil Action No. 2:18-cv-0069

**PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

PLAINTIFFS' EXHIBIT 29

Excerpt from Virginia Beach Disparity Study (DEF08923-08947)



2018 Disparity Study

City of Virginia Beach

FINAL REPORT

DEF08923

Final Report

January 2019

2018 City of Virginia Beach Disparity Study

Prepared for

City of Virginia Beach

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DEF08924

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CHAPTER ES.

Executive Summary

CHAPTER ES.

Executive Summary

The City of Virginia Beach (The City) retained BBC Research & Consulting (BBC) to conduct a *disparity study* to help refine the organization's implementation of the Small, Woman, and Minority-owned Business (SWaM) Program. The primary objective of the program is to encourage the participation of small businesses, minority-owned businesses, woman-owned businesses, and service-disabled veteran-owned businesses in City contracting.¹ To meet that objective, the City uses various *race- and gender-neutral measures*. In the context of contracting and procurement, race- and gender-neutral measures are measures that are designed to encourage the participation of small businesses in a government organization's contracting, regardless of the race/ethnicity or gender of the businesses' owners. In contrast to race- and gender-neutral measures, *race- and gender-conscious measures* are measures that are specifically designed to encourage the participation of minority- and woman-owned businesses in government contracting. The City does not currently use any race- or gender-conscious measures as part of the SWaM Program.

As part of the disparity study, BBC assessed whether there were any disparities between:

- The percentage of contract dollars that the City spent with of minority-, woman-, and service-disabled veteran-owned businesses between July 1, 2012 and June 30, 2017 (i.e., the *study period*) (i.e., *utilization, or participation*); and
- The percentage of contract dollars that minority-, woman-, and service-disabled veteran-owned businesses might be expected to receive based on their availability to perform specific types and sizes of the City's prime contracts and subcontracts (i.e., *availability*).

The disparity study also examined other quantitative and qualitative information related to:

- The legal framework related to the City's implementation of the SWaM Program;
- Local marketplace conditions for that minority-, woman-, and veteran-owned businesses; and
- Contracting practices and business assistance programs that the City currently has in place.

The City could use information from the study to help refine its implementation of the SWaM Program, including setting overall aspirational goals for the participation of minority- and woman-owned businesses in City contracting; determining which program measures to use to encourage the participation of minority- and woman-owned businesses in City contracting; and, if appropriate, determining which racial/ethnic and gender groups would be eligible to

¹ "Woman-owned businesses" refers to non-Hispanic white woman owned businesses. Information and results for minority woman-owned businesses are included along with their corresponding racial/ethnic groups.

participate in any race- or gender-conscious program measures that the City might decide to use in the future.

BBC summarizes key information from the 2018 City of Virginia Beach Disparity Study in five parts:

- A. Analyses in the disparity study;
- B. Availability analysis results;
- C. Utilization analysis results;
- D. Disparity analysis results; and
- E. Program implementation.

A. Analyses in the Disparity Study

Along with measuring disparities between the participation and availability of minority-, woman-, and service-disabled veteran-owned businesses in City contracts, BBC also examined other information related to the City's implementation of the SWaM Program:

- The study team conducted an analysis of federal regulations, case law, and other information to guide the methodology for the disparity study. The analysis included a review of legal requirements related to minority- and woman-owned business programs, including the SWaM Program (see Chapter 2 and Appendix B).
- BBC conducted quantitative analyses of outcomes for minorities, women, veterans, and the businesses that they own throughout the *relevant geographic market area*.² In addition, the study team collected qualitative information about potential barriers that minorities, women, veterans, and the businesses that they own face in the local marketplace through in-depth interviews, telephone surveys, public meetings, and written testimony (see Chapter 3, Appendix C, and Appendix D).
- BBC analyzed the percentage of relevant City contracting dollars that minority-, woman-, and service-disabled veteran-owned businesses are available to perform. That analysis was based on telephone surveys that the study team completed with more than 1,000 businesses that work in industries related to the specific types of construction; architecture and engineering; other professional services; and goods and services contracts that the City awards (see Chapter 5 and Appendix E).
- BBC analyzed the dollars that minority-, woman-, and service-disabled veteran-owned businesses received on more than 26,000 construction; architecture and engineering; other professional services; and goods and services contracts that the City awarded during the study period (see Chapter 6).
- BBC examined whether there were any disparities between the participation and availability of minority-, woman-, and service-disabled veteran-owned businesses on

² BBC identified the relevant geographic market area as Chesapeake City, Norfolk City, Portsmouth City, and Virginia Beach City.

construction; architecture and engineering; other professional services; and goods and services contracts that the City awarded during the study period (see Chapter 7).

- BBC reviewed the measures that the City uses to encourage the participation of minority-, woman-, and service-disabled veteran-owned businesses in its contracting as well as measures that other organizations in the region use (see Chapter 8).
- BBC provided guidance related to additional program options and potential changes to current contracting practices for the City's consideration (see Chapter 9).

B. Availability Analysis Results

BBC conducted a *custom census* to analyze the availability of minority-, woman-, and service-disabled veteran-owned businesses for City prime contracts and subcontracts. BBC's approach relied on information from surveys that the study team conducted with potentially available businesses located in the relevant geographic market area that perform work within relevant subindustries. That approach allowed BBC to develop a representative, unbiased, and statistically-valid database of potentially available businesses to estimate the availability of minority-, woman-, and service-disabled veteran-owned businesses accurately.

Minority- and woman-owned businesses. BBC examined the availability of minority- and woman-owned businesses for various contracts sets to assess the degree to which they are ready, willing, and able to perform different types of City work.

Overall. Figure ES-1 presents overall dollar-weighted availability estimates by relevant business group for all City contracts and procurements. Overall, the availability of minority- and woman-owned businesses for City contracts and procurements is 25.2 percent, indicating that minority- and woman-owned businesses might be expected to receive 25.2 percent of the dollars that the City awards in construction; architecture and engineering; other professional services; and goods and services. Non-Hispanic white woman-owned businesses (13.3%) and Black American-owned businesses (8.1%) exhibited the highest availability percentages among all groups.

Figure ES-1.
Overall availability estimates by
racial/ethnic and gender group

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail and results by group, see Figure F-2 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Availability %
Asian American-owned	0.8 %
Black American-owned	8.1 %
Hispanic American-owned	2.7 %
Native American-owned	0.4 %
Total Minority-owned	12.0 %
Non-Hispanic white woman-owned	13.3 %
Total Minority- and Woman-owned	25.2 %

Contract role. Many minority- and woman-owned businesses are small businesses and thus often work as subcontractors. Because of that tendency, it is useful to examine availability estimates separately for prime contracts and subcontracts. As shown in Figure ES-2, the availability of minority- and woman-owned businesses considered together is lower for City prime contracts (24.5%) than for subcontracts (31.6%). Among other factors, that result could

be due to the fact that subcontracts tend to be much smaller in size than prime contracts and are thus more accessible than prime contracts to minority- and woman-owned businesses.

Figure ES-2.
Availability estimates
by contract role

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail, see Figures F-9 and F-10 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Contract role	
	Prime contracts	Subcontracts
Asian American-owned	0.8 %	1.0 %
Black American-owned	8.0 %	8.4 %
Hispanic American-owned	2.7 %	2.8 %
Native American-owned	0.4 %	0.2 %
Non-Hispanic white woman-owned	12.5 %	19.2 %
Total Minority- and Woman-owned	24.5 %	31.6 %

Industry. BBC examined availability analysis results separately for construction; architecture and engineering; other professional services; and goods and services contracts. As shown in Figure ES-3, the availability of minority- and woman-owned businesses is highest for the City's architecture and engineering contracts (32.6%) and lowest for construction contracts (19.8%).

Figure ES-3.
Availability estimates by industry

Business group	Industry			
	Construction	Architecture and engineering	Other professional services	Goods and services
Asian American-owned	1.6 %	0.0 %	0.1 %	0.1 %
Black American-owned	5.7 %	9.2 %	10.4 %	10.1 %
Hispanic American-owned	2.8 %	3.1 %	4.8 %	1.1 %
Native American-owned	0.0 %	1.7 %	0.7 %	0.1 %
Non-Hispanic white woman-owned	9.6 %	18.6 %	10.3 %	18.8 %
Total Minority- and Woman-owned	19.8 %	32.6 %	26.3 %	30.3 %

Note: Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail and results by group, see Figure F-5, F-6, F-7, and F-8 in Appendix F.

Source: BBC Research & Consulting availability analysis.

Goal status. The City used SWaM contract goals to encourage the participation of small businesses, minority-owned businesses, and woman-owned businesses in many of the contracts that it awarded during the study period. SWaM goals only applied to select construction contracts during the study period. It is useful to examine availability analysis results separately for contracts that the City awarded with the use of SWaM contract goals (*goals contracts*) and contracts that it awarded without the use of goals (*no goals contracts*). Figure ES-4 presents availability estimates separately for goals and no goals contracts. As shown in Figure ES-4, the availability of minority- and woman-owned businesses considered together is lower for goals contracts (21.1%) than for no goals contracts (28.0%).

Figure ES-4
Availability estimates by
contract goals status

Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail, see Figures F-11 and F-12 in Appendix F.

Source:

BBC Research & Consulting availability analysis.

Business group	Goals status	
	Goals	No goals
Asian American-owned	1.1 %	0.5 %
Black American-owned	5.5	9.7
Hispanic American-owned	3.3	2.4
Native American-owned	0.4	0.4
Non-Hispanic white woman-owned	10.7 %	14.9 %
Total Minority- and Woman-owned	21.1 %	28.0 %

Service disabled veteran-owned businesses. BBC examined the overall availability of service-disabled veteran-owned businesses for City work (i.e., businesses owned by veterans who have a disability as a result of their service). The availability analysis indicated that the availability of service-disabled veteran-owned businesses for the City's contracts and procurements is 11.9 percent.

C. Utilization Analysis Results

BBC measured the participation of minority-, woman-, and service-disabled veteran-owned businesses in City contracting in terms of *utilization*—the percentage of prime contract and subcontract dollars that those businesses received on City prime contracts and subcontracts during the study period. BBC measured the participation of minority-, woman-, and service-disabled veteran-owned businesses in City contracts regardless of whether they were certified SWaM businesses.

Minority- and woman-owned businesses. BBC examined the participation of minority- and woman-owned businesses for various sets of contracts that the City awarded during the study period. The study team assessed the participation of all of those businesses considered together and separately for each relevant racial/ethnic and gender group.

Overall. Figure ES-5 presents the percentage of contracting dollars that minority- and woman-owned businesses received on construction; architecture and engineering; other professional services; and goods and services contracts and procurements that the City awarded during the study period (including both prime contracts and subcontracts). Overall, minority- and woman-owned businesses considered together received 18.9 percent of the relevant contracting dollars that the City awarded during the study period. Non-Hispanic white woman-owned businesses (8.2%) and Asian American-owned businesses (5.6%) exhibited higher levels of participation than all other groups.

Figure ES-5.
Overall utilization results

Note:

Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals.

For more detail, see Figure F-2 in Appendix F.

Source:

BBC Research & Consulting utilization analysis.

Business group	Utilization
Minority- and Woman-owned	
Asian American-owned	5.6 %
Black American-owned	4.5 %
Hispanic American-owned	0.5 %
Native American-owned	0.0 %
Non-Hispanic white woman-owned	8.2 %
Total Minority- and Woman-owned	18.9 %

Contract role. Many minority- and woman-owned businesses are small businesses, and thus, often work as subcontractors. Because of that tendency, it is useful to examine utilization results separately for prime contracts and subcontracts. As shown in Figure ES-6, the participation of minority- and woman-owned businesses considered together was higher in the City's subcontracts (21.9%) than prime contracts (18.5%). The vast majority of contracting dollars that the City awarded during the study period were associated with prime contracts.

Figure ES-6.
Utilization results by contract role

Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals.

For more detail, see Figures F-9 and F-10 in Appendix F.

Source:

BBC Research & Consulting utilization analysis.

Business group	Contract role	
	Prime contracts	Subcontracts
Asian American-owned	6.3 %	0.4 %
Black American-owned	4.9 %	1.3 %
Hispanic American-owned	0.4 %	2.1 %
Native American-owned	0.0 %	0.0 %
Non-Hispanic white woman-owned	6.9 %	18.1 %
Total Minority- and Woman-owned	18.5 %	21.9 %

Figure ES-7.
Utilization results by relevant industry

Business Group	Industry			
	Construction	Architecture and Engineering	Other Professional Services	Goods and Services
Asian American-owned	0.2 %	0.4 %	32.1 %	0.4 %
Black American-owned	1.3 %	0.9 %	15.3 %	5.2 %
Hispanic American-owned	1.0 %	0.1 %	0.4 %	0.1 %
Native American-owned	0.0 %	0.0 %	0.0 %	0.0 %
Non-Hispanic white woman-owned	9.3 %	8.7 %	2.9 %	9.3 %
Total Minority- and Woman-owned	11.8 %	10.1 %	50.6 %	15.0 %

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals.

For more detail, see Figures F-5, F-6, F-7, and F-8 in Appendix F.

Source: BBC Research & Consulting utilization analysis.

Industry. BBC examined utilization analysis results separately for the City's construction; architecture and engineering; other professional services; and goods and services contracts. As shown in Figure ES-7, the participation of minority- and woman-owned businesses considered together was highest in the City's other professional services contracts (50.6%) and lowest in

architecture and engineering contracts (10.1%). The plurality of contracting dollars that the City awarded during the study period were associated with construction contracts for which the participation of minority- and woman-owned businesses was 11.8 percent.

Goal status. The City used SWaM contract goals to encourage the participation of small businesses, minority-owned businesses, and woman-owned businesses in many of the contracts that it awarded during the study period. SWaM goals only applied to select construction contracts during the study period. It is useful to examine participation separately for *goals contracts* and *no goals contracts* an assessment of how effective the use of those goals was in encouraging the participation of minority- and woman-owned businesses in particular. As shown in Figure ES-8, the participation of minority- and woman-owned businesses considered together was actually much higher in no goals contracts (23.7%) than goals contracts (11.5%).

Figure ES-8.
Utilization results by
contract goal status

Numbers rounded to nearest tenth of 1 percent.
Numbers may not add to totals.
For more detail, see Figures F-11 and F-12 in Appendix F.

Source:
BBC Research & Consulting utilization analysis.

Business group	Goal status	
	Goals	No goals
Asian American-owned	0.1 %	9.3 %
Black American-owned	0.9 %	6.9 %
Hispanic American-owned	1.1 %	0.2 %
Native American-owned	0.0 %	0.0 %
Non-Hispanic white woman-owned	9.4 %	7.3 %
Total Minority- and Woman-owned	11.5 %	23.7 %

Service-disabled veteran-owned businesses. BBC also examined the participation of service-disabled veteran-owned businesses in the contracts and procurements that the City awarded during the study period. The utilization analysis indicated that the participation of service-disabled veteran-owned businesses in City contracts and procurements was 0.7 percent.

D. Disparity Analysis Results

Although information about the participation of minority-, woman-, and service-disabled veteran-owned businesses in City contracts is useful on its own, it is even more useful when it is compared with the level of participation that might be expected based on their availability for City work. As part of the disparity analysis, BBC compared the participation of minority-, woman-, and service-disabled veteran-owned businesses in City prime contracts and subcontracts with the percentage of contract dollars that those businesses might be expected to receive based on their availability for that work. BBC calculated *disparity indices* for each relevant business group and for various contract sets by dividing percent utilization by percent availability and multiplying by 100. A disparity index of 100 indicates an exact match between participation and availability for a particular group for a particular contract set (referred to as *parity*). A disparity index of less than 100 indicates a disparity between participation and availability. A disparity index of less than 80 indicates a *substantial* disparity between participation and availability.

Minority-and woman-owned businesses. BBC examined the availability of minority- and woman-owned businesses for various contracts sets to assess the degree to which they may have been underutilized on various types of City work.

Overall. Figure ES-9 presents disparity indices for all relevant prime contracts and subcontracts that the City awarded during the study period. The line down the center of the graph shows a disparity index level of 100, which indicates parity between participation and availability. A line is also drawn at a disparity index level of 80, because some courts use 80 as the threshold for what indicates a substantial disparity. As shown in Figure ES-9, overall, the participation of minority- and woman-owned businesses in contracts that the City awarded during the study period was substantially lower than what one might expect based on the availability of those businesses for that work. The disparity index of 75 indicates that minority- and woman-owned businesses received approximately \$0.75 for every dollar that they might be expected to receive based on their availability for the relevant prime contracts and subcontracts that the City awarded during the study period. Disparity analysis results by individual racial/ethnic and gender group indicated that:

- Four groups exhibited disparity indices substantially below parity: non-Hispanic white woman-owned businesses (disparity index of 62), Black American-owned businesses (disparity index of 56), Hispanic American-owned businesses (disparity index of 20), and Native American-owned businesses (disparity index of 5).
- Asian American-owned businesses (disparity index of 200+) did not exhibit a disparity.

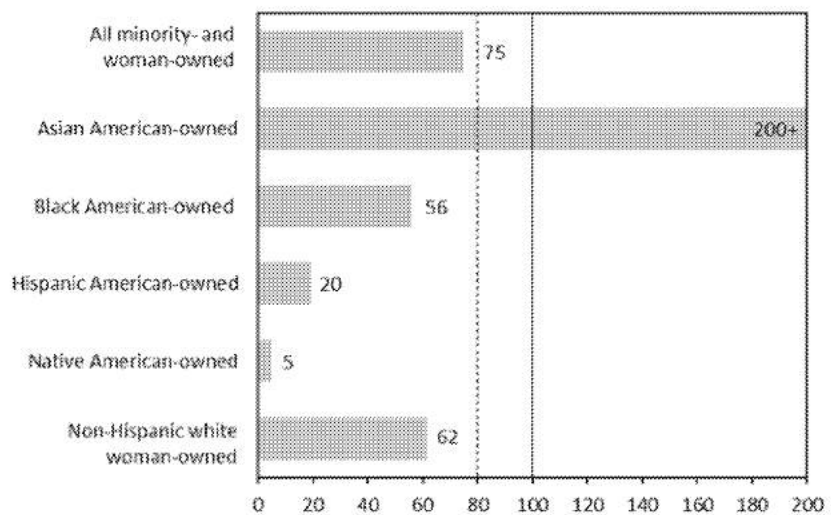
Figure ES-9.
Disparity indices by group

Note:

For more detail, see Figure F-2 in Appendix F.

Source:

BBC Research & Consulting disparity analysis.



Contract role. Subcontracts tend to be much smaller in size than prime contracts. As a result, subcontracts are often more accessible than prime contracts to minority- and woman-owned businesses. Thus, it might be reasonable to expect better outcomes for minority- and woman-owned businesses on subcontracts than on prime contracts. As shown in Figure ES-10, minority- and woman-owned businesses considered together showed a substantial disparity for both prime contracts (disparity index of 76) and subcontracts (disparity index of 69). Results for individual groups indicated that:

- All groups showed substantial disparities on prime contracts except for Asian American-owned businesses (disparity index of 200+).
- All groups showed substantial disparities on subcontracts except for non-Hispanic white woman-owned businesses (disparity index of 94).

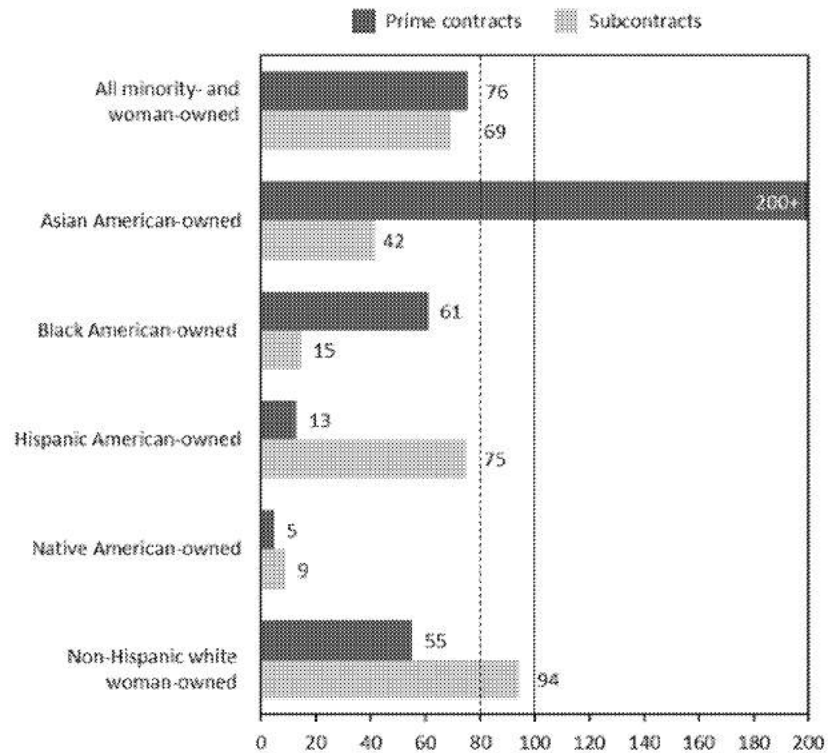
Figure ES-10.
Disparity indices for prime contracts and subcontracts

Note:

For more detail, see Figures F-9 and F-10 in Appendix F.

Source:

BBC Research & Consulting
 disparity analysis.



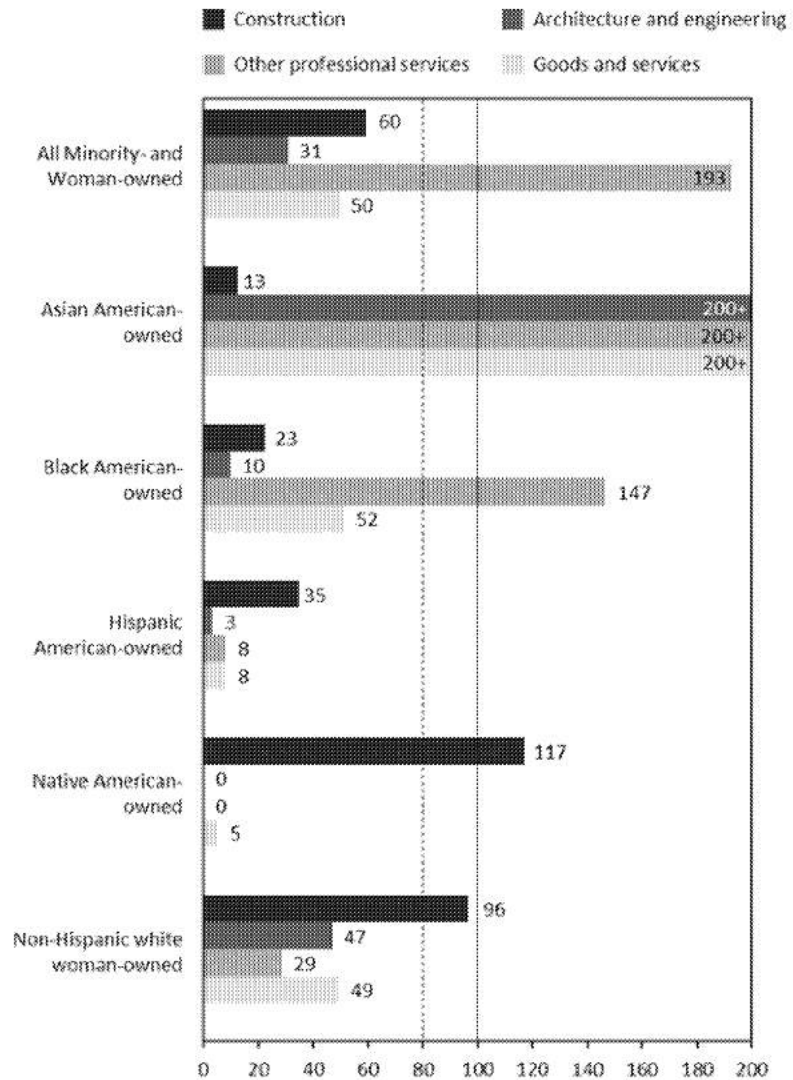
Industry. BBC examined disparity analysis results separately for the City's construction; architecture and engineering; other professional services; and goods and services contracts. As shown in Figure ES-11, minority- and woman-owned businesses considered together showed substantial disparities for each relevant industry except other professional services (disparity index of 193). Disparity analysis results differed by industry and group:

- Three individual groups showed substantial disparities on construction contracts: Asian American-owned businesses (disparity index of 13), Black American-owned businesses (disparity index of 23), and Hispanic American-owned businesses (disparity index of 35).
- All individual groups showed substantial disparities on architecture and engineering contracts except for Asian American-owned businesses (disparity index of 200+).
- Three individual groups showed substantial disparities on other professional services contracts: Hispanic American-owned businesses (disparity index of 8), Native American-owned businesses (disparity index of 0), and non-Hispanic white woman-owned businesses (disparity index of 29).
- All individual groups showed substantial disparities on goods and services contracts except for Asian American-owned businesses (disparity index of 200+).

Figure ES-11.
Disparity analysis results
by relevant industry

Note:
 For more detail, see Figures F-5, F-6, F-7,
 and F-8 in Appendix F.

Source:
 BBC Research & Consulting
 disparity analysis.



Goal status. The City used SWaM contract goals to encourage the participation of small businesses, minority-owned businesses, and woman-owned businesses in many of the contracts that it awarded during the study period. SWaM goals only applied to select construction contracts during the study period. It is useful to examine disparity analysis results separately for *goals contracts* and *no goals contracts* to assess the effectiveness of those goals to address any disparities between participation and availability. As shown in Figure ES-12, minority- and woman-owned businesses considered together actually showed a substantial disparity for goals contracts (disparity index of 55) but not for no goals contracts (disparity index of 85). Results for individual groups indicated that SWaM contract goals may be more effective in addressing disparities for certain groups than others:

- Non-Hispanic white woman-owned businesses did not exhibit a substantial disparity on goals contracts (disparity index of 88) but all other individual groups did exhibit substantial disparities.
- All individual groups showed substantial disparities on no goals contracts except for Asian American-owned businesses (disparity index of 200+).

Service-disabled veteran-owned businesses. BBC also compared participation to availability for service-disabled veteran-owned businesses in City work. Service-disabled veteran-owned businesses exhibited a disparity index of 6, indicating that their actual participation in City contracting was substantially less than their availability.

Figure ES-12.
Disparity analysis results
by contract goals status

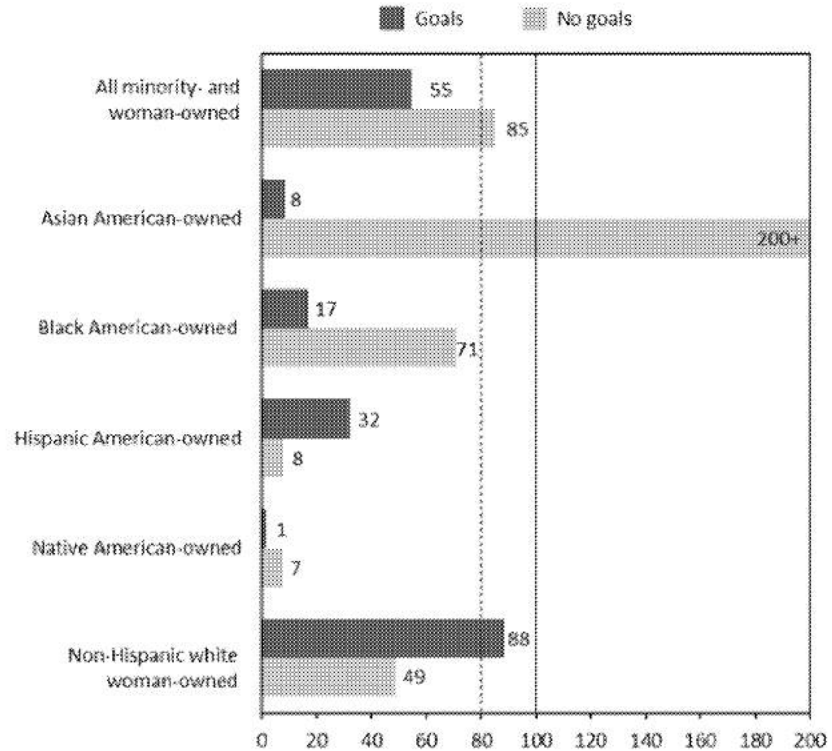
Note:

Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals.

For more detail, see Figures F-11 and F-12 in Appendix F.

Source:

BBC Research & Consulting availability analysis.



E. Program Implementation

The City should review study results and other relevant information in connection with making decisions concerning its implementation of the SWaM. Key considerations of potential refinement are discussed below. In making those considerations, the City should also assess whether additional resources, changes in internal policy, or changes in state law may be required.

Overall annual aspirational goal. In 2010, the City adopted an annual aspirational goal of 10 percent for minority-owned business participation in City contracts. Results from the disparity study—particularly the availability analysis and analyses of marketplace conditions—can be helpful to the City in adjusting its overall annual goal for the participation of minority-owned businesses and also to potentially include woman-owned businesses and service-disabled veteran-owned businesses. The availability analysis indicates that, considering all industries together, minority-owned businesses might be expected to receive 12.0 percent of City contracting dollars and woman-owned businesses might be expected to receive 13.3 percent of

City contracting dollars.³ The availability analysis indicated that service-disabled veteran-owned businesses might be expected to receive 11.9 percent of City contracting dollars. The City should consider adjusting its overall aspirational goal based on that information and information about local marketplace conditions presented in Chapter 3, Appendix C, and Appendix D.

SWaM Office. The City does not have a dedicated office to implement the SWaM Program and monitor the participation of SWaM-certified businesses in its contracts. Instead, the City currently relies on staff who work in the Purchasing Division to do so. The City should consider establishing a dedicated office responsible for implementing the SWaM Program and monitoring progress that the City is making towards encouraging the participation of minority-owned businesses, woman-owned businesses, and service-disabled veteran-owned businesses in its contracting. The office should have enough dedicated staff to carry out essential program functions. Although the City's Minority Business Coordinator currently works within the Purchasing Division, the City might instead consider housing a SWaM Office within the Office of Economic Development. Doing so would allow SWaM staff to more effectively partner with the Office of Economic Development, which already carries out a number of activities relevant to potential SWaM Office efforts.

Data collection. The City maintains comprehensive data on the prime contracts and procurements that it awards and maintains those data in a well-organized and intuitive manner. However, the City does not maintain an adequate link between its contracting and payment information and could easily do so in its current systems. Doing so would allow the City to accurately assess whether there are substantial differences between contract award and payment amounts. Moreover, the City does not maintain comprehensive data on subcontracts that are associated with the prime contracts that it awards. The City should consider collecting comprehensive data on *all* subcontracts, regardless of the ownership status of each business. Collecting data on all subcontracts will help ensure that the City monitors the participation of minority-, woman-, and service-disabled veteran-owned businesses accurately. The City should consider collecting those data as part of bids and also requiring prime contractors to submit data on subcontracts as part of the invoicing process for all contracts. The City should train relevant department staff to collect and enter subcontract data accurately and consistently.

Growth monitoring. Along with working to improve its contracting and vendor data systems, the City might also consider collecting data on the impact that the SWaM Program has on the growth of minority-owned businesses, woman-owned businesses, and service-disabled veteran-owned businesses over time. Doing so would require the City to collect baseline information on SWaM-certified businesses—such as revenue, number of locations, number of employees, and employee demographics—and then continue to collect that information from each business on an annual basis. Such metrics would allow the City to assess whether the program is helping businesses grow and refine the measures that it uses as part of the SWaM Program.

³ The availability of minority- and woman-owned businesses for all industries considered together reflects a weight of 0.45 for construction; 0.13 for architecture and engineering; 0.17 for other professional services; and 0.26 for goods and services, based on the volume of dollars that the City spent during the study period in each industry.

Business certification. The City does not currently certify minority- and woman-owned businesses or other diverse businesses itself but instead relies on the Virginia Department of Small Business and Supplier Diversity (SBSD) to do so. Some businesses participating in in-depth interviews and public meetings commented on the difficulties and time requirements associated with SBSD's certification process. The City might consider operating its own certification process as part of the SWaM Program along with recognizing SBSD-certified businesses. Doing so would allow the City to certify minority-owned businesses, woman-owned businesses, and service-disabled veteran-owned businesses using criteria that are most relevant to its local marketplace (e.g., race/ethnicity of owners, gender of owners, and revenue requirements).

Subcontract opportunities. Subcontracts often represent accessible opportunities for small and diverse businesses to become involved in contracting. However, subcontracting accounted for a relatively small percentage of the total contracting dollars that the City awarded during the study period. To increase the number of subcontract opportunities, the City could consider implementing a program that requires prime contractors to subcontract a certain amount of project work as part of their bids and proposals, regardless of the race/ethnicity or gender of subcontractor owners. For specific types of contracts where subcontracting or partnership opportunities might exist, the City could set a minimum percentage of work to be subcontracted. Prime contractors would then have to meet or exceed that threshold in order for their bids to be considered responsive.

Contract goals. The City should consider using minority- and woman-owned business goals on individual contracts that it awards. Disparity analysis results indicated that nearly all relevant groups showed substantial disparities on the contracts that the City awarded during the study period, indicating that they are facing barriers as part of the City's contracting processes. Because the City uses many race- and gender-neutral measures to encourage the participation of minority- and woman-owned businesses in its contracting, and because those measures have not sufficiently addressed disparities for several individual groups, the City might consider using contract goals in the future. Because the use of such goals would be considered a race- and gender-conscious measure, the City will need to ensure that the use of those goals meets the strict scrutiny standard of constitutional review (for details, see Chapter 2 and Appendix B).

Unbundling large contracts. In general, minority- and woman-owned businesses exhibited reduced availability for relatively large contracts that the City awarded during the study period. In addition, as part of in-depth interviews and public meetings, several businesses owners reported that the size of government contracts often serves as a barrier to their success (for details, see Appendix D). To further encourage the participation of small and diverse businesses, the City should consider making efforts to unbundle relatively large prime contracts and even subcontracts into several smaller contracts. For example, the City of Charlotte, North Carolina encourages prime contractors to unbundle subcontracting opportunities into smaller contract pieces that are more feasible for small businesses and minority- and woman-owned businesses to work on and accepts such attempts as good faith efforts as part of its contracting goals program.

Prompt payment. As part of in-depth interviews, several businesses, including many minority- and woman-owned businesses, reported difficulties with receiving payment in a timely manner on City contracts, particularly when they work as subcontractors (for details, see

Appendix D). Many businesses also commented that having capital on hand is crucial to business success and is often challenging for small businesses. City contracts include language to ensure prompt payment of subcontractors, but the City should consider reinforcing prompt payment policies with its procurement staff and prime contractors. In addition, the City typically pays contractors via hardcopy checks and could consider automating payments. Doing so might help ensure that both prime contractors and subcontractors receive payment in a timely manner.

CHAPTER 1.

Introduction

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Introduction

Virginia Beach is the most populous city in Virginia and one of the 40 most populous cities in the United States. The City of Virginia Beach (the City) provides myriad services to the nearly 500,000 people who live and work in the region. Those services include police and fire protection; health and mental health services; road construction and maintenance; water and sewage services; and a variety of social and economic services. As part of providing those services, the City typically spends hundreds of millions of contracting dollars each year to procure various goods and services in construction; architecture and engineering; other professional services; and goods and services.

Over the past 20 years, the City has used various strategies and efforts to encourage the participation of small businesses, minority-owned businesses, woman-owned businesses, and service-disabled veteran-owned businesses in its contracting. Those efforts have included:

- Establishing the Small, Woman, and Minority-owned Business (SWaM) Program;
- Establishing the Small Business Enhancement Program;
- Establishing an aspirational 10 percent goal for the participation of minority-owned businesses in City contracting;
- Creating the region's first Minority Business Council;
- Unbundling City contracts to better enable SWaM businesses to compete for City contracts;
- Providing department buyers access to a comprehensive database of SWaM businesses;
- Implementing a City Administrative Directive requiring the solicitation of SWaM businesses and service-disabled veteran-owned businesses for procurements worth less than \$50,000;
- Entering into a Memorandum of Understanding with the Virginia Department of Small Business and Supplier Diversity-SBSD;
- Creating three business diversity positions: the Minority Business Coordinator, the SWaM Business Development Manager, and the Title VI Civil Rights Compliance Coordinator; and
- Implementing a bond waiver/prequalification program.

The City retained BBC Research & Consulting (BBC) to conduct a *disparity study* to help evaluate the effectiveness of its measures to encourage the participation of minority-, woman-, and service-disabled veteran-owned businesses in its contracts and procurements. As part of the study, BBC examined whether there are any disparities between:

- The percentage of contract dollars that the City spent with of minority-, woman-, and service-disabled veteran-owned businesses during the study period (i.e., *utilization*); and
- The percentage of contract dollars that minority-, woman-, and service-disabled veteran-owned businesses might be expected to receive based on their availability to perform specific types and sizes of the City's prime contracts and subcontracts (i.e., *availability*).

BBC also assessed other quantitative and qualitative information related to:

- The legal framework related to the City's implementation of the SWaM Program;
- Local marketplace conditions for minority- and woman-owned businesses; and
- Contracting practices and business assistance programs that the City currently has in place.

There are several reasons why the disparity study will be useful to the City:

- The disparity study provides an independent review of the participation of minority-, woman-, and service-disabled veteran-owned businesses in the City's contracting and procurement, which will be valuable to City leadership and external stakeholders;
- Information from the disparity study will be useful to the City as it makes decisions about the SWaM Program;
- The disparity study provides insights into how to increase contracting opportunities for minority-, woman-, and service-disabled veteran-owned businesses; and
- Organizations that have successfully defended their implementations of contracting programs in court have typically relied on information from disparity studies.

BBC introduces the City of Virginia Beach Disparity Study in three parts:

- A. Background;
- B. Study scope; and
- C. Study team members.

A. Background

The SWaM Program is designed to encourage the participation of small businesses, minority-owned businesses, and woman-owned businesses in City contracting and procurement, particularly in the contracting areas of construction; architecture and engineering; and other professional services. To try to meet the objectives of the program, the City uses various *race- and gender-neutral program measures* to encourage the participation of those businesses in its own contracting. Race- and gender-neutral measures are measures that are designed to encourage the participation of small businesses in a government organization's contracting, regardless of the race/ethnicity or gender of businesses' owners. The types of race- and gender-neutral measures that the City currently uses include:

- Networking and outreach events;
- Training seminars and workshops;
- Financing and bonding assistance;
- Mentorship; and
- Monitoring and reporting.

In contrast to race- and gender-neutral measures, *race- and gender-conscious measures* are measures that are specifically designed to encourage the participation of minority- and woman-owned businesses in government contracting (e.g., participation goals for minority- and woman-owned business on individual contracts). The City does not currently use any race- or gender-conscious measures as part of the SWaM Program.

B. Study Scope

Information from the disparity study will help the City continue to encourage the participation of minority-, woman-, and service-disabled veteran-owned businesses in its contracting and procurement. In addition, it will help the City implement the SWaM Program effectively and in a legally-defensible manner.

Relevant business groups. In general, BBC focused its analyses on whether barriers or discrimination based on race/ethnicity, gender, or a military-related disability affected the participation of businesses in City contracts or procurements, regardless of whether those businesses were, or could be, SWaM-certified. Analyzing the participation and availability of businesses regardless of SWaM certification allowed BBC to assess whether such barriers affect business success independent of certification status. To interpret the core analyses presented in the disparity study, it is useful to understand how the study team defines the various groups of businesses that are the focus of the SWaM Program and the disparity study.

Minority- and woman-owned businesses. BBC analyzed business outcomes for minority- and woman-owned businesses, which were defined as businesses owned by Asian Americans, Black Americans, Hispanic Americans, Native Americans, or women of any race/ethnicity. To avoid double-counting, BBC classified minority woman-owned businesses with their corresponding minority groups. (For example, Black American woman-owned businesses were classified along with businesses owned by Black American men as Black American-owned businesses.) Thus, *woman-owned businesses* in this report refers to non-Hispanic white woman-owned businesses.

Service-disabled veteran-owned businesses. BBC analyzed business outcomes for service-disabled veteran-owned businesses, which were defined as businesses that are owned by veterans of the United States military who have a mental or physical disability that resulted directly from their military service.

SWaM-certified businesses. SWaM-certified businesses are small businesses, minority-owned businesses, or woman-owned businesses that are specifically certified as SWaM businesses through the Commonwealth of Virginia (the Commonwealth). Businesses seeking SWaM certification are required to submit an application to the Commonwealth. The application is available online and requires businesses to submit various information including business name; contact information; license information; financial information; work specializations; and the race/ethnicity and gender of their owners. The Commonwealth reviews each application for approval. Note that firms owned by non-Hispanic white men who are not service-disabled veterans can also become SWaM-certified if they meet eligibility requirements for being small businesses. However, BBC's analyses focused primarily on businesses that are minority-owned or woman-owned.

Potential SWaM-certified businesses. Potential SWaM-certified businesses are minority- or woman-owned businesses that are SWaM-certified or appear that they could be certified based

on ownership status and size requirements set forth by the Commonwealth. The study team did not count businesses that have been decertified from the SWaM Program as potential SWaM-certified businesses in this study.

Majority-owned businesses. Majority-owned businesses are businesses that are owned by non-Hispanic white men who are not service-disabled veterans.

Analyses in the disparity study. The disparity study examined whether there are any disparities between the participation and availability of minority-, woman-, and service-disabled veteran-owned businesses on City contracts. In addition, the disparity study also includes:

- A review of legal issues related to the City's implementation of the SWaM Program;
- An analysis of local marketplace conditions for minority-, woman-, and service-disabled veteran-owned businesses;
- An assessment of the City's contracting practices and business assistance programs; and
- Other information for the City to consider as it refines its implementation of the SWaM Program.

The disparity study focused on construction; architecture and engineering; other professional services; and goods and services that the City awarded between July 1, 2012 and June 30, 2017 (i.e., the study period). Information from the disparity study is organized as follows:

Legal framework and analysis. The study team conducted a detailed analysis of relevant federal regulations, case law, state law, and other information to guide the methodology for the disparity study. The analysis included a review of federal and state requirements concerning the implementation of minority- and woman-owned business programs. The legal framework and analysis is summarized in **Chapter 2** and presented in detail in **Appendix B**.

Marketplace conditions. BBC conducted quantitative analyses of the success of minorities and women as well as minority-, woman-, and veteran-owned businesses in the local contracting and procurement industries. BBC compared business outcomes for minorities and women as well as minority- and woman-owned businesses to outcomes for non-Hispanic white men and businesses owned by non-Hispanic white men. In addition, the study team collected qualitative information about potential barriers that minority-, woman-, and service-disabled veteran-owned businesses face in the Virginia Beach region through in-depth interviews and public meetings. Information about marketplace conditions is presented in **Chapter 3, Appendix C, and Appendix D**.

Data collection. BBC collected comprehensive data on the prime contracts and subcontracts that the City awarded during the study period as well as information on the businesses that participated in those contracts. The scope of BBC's data collection efforts is presented in **Chapter 4**.

Availability analysis. BBC assessed the degree to which minority-, woman-, and service-disabled veteran-owned businesses are *ready, willing, and able* to perform on City prime contracts and subcontracts. That analysis was based on City data and telephone surveys that the study team conducted with thousands of businesses that are located in the Virginia Beach region and that

work in industries related to the types of contracts and procurements that the City awards. Results from the availability analysis are presented in **Chapter 5** and **Appendix E**.

Utilization analysis. BBC analyzed prime contract and subcontract dollars that the City spent with minority-, woman-, and service-disabled veteran-owned businesses on contracts that it awarded during the study period. Results from the utilization analysis are presented in **Chapter 6**.

Disparity analysis. BBC examined whether there were any disparities between the utilization and availability of minority-, woman-, and service-disabled veteran-owned businesses on prime contracts and subcontracts that the City awarded during the study period. The study team also assessed whether any observed disparities were statistically significant. Results from the disparity analysis are presented in **Chapter 7** and **Appendix F**.

Program measures. BBC reviewed the race- and gender-neutral measures that the City uses to encourage the participation of small businesses in its contracting as well as measures that other organizations across the country use. That information is presented in **Chapter 8**.

Program implementation. BBC reviewed the City's contracting practices and program measures that are part of its implementation of the SWaM Program. BBC provided guidance related to additional program options and changes to current contracting practices for the City to consider. The study team's review and guidance related to program implementation is presented in **Chapter 9**.

C. Study Team Members

The BBC disparity study team was made up of four firms that, collectively, possess decades of experience related to conducting disparity studies in connection with small and diverse business programs.

BBC (prime consultant). BBC is a Denver-based disparity study and economic research firm. BBC had overall responsibility for the disparity study and performed all of the quantitative analyses.

The Miles Agency. The Miles Agency is a Black American woman-owned community engagement firm based in Virginia Beach. The Miles Agency conducted in-depth interviews with businesses located in the Virginia Beach region as part of the study team's qualitative analyses of marketplace conditions. In addition, the firm helped facilitate various community engagement efforts.

Holland & Knight. Holland & Knight is a law firm with offices throughout the country. Holland & Knight conducted the legal analysis that provided the basis for the study.

Customer Research International (CRI). CRI is a Subcontinent Asian American-owned survey fieldwork firm based in San Marcos, Texas. CRI conducted telephone surveys with thousands of businesses located in the Virginia Beach region to gather information for the utilization and availability analyses.